

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

J&amp;J SPORTS PRODUCTIONS, INC.,

No. C-13-5644 EMC

Plaintiff,

v.

FRANCO CRUZ TORRES,

Defendant.

**ORDER DISCHARGING ORDER TO  
SHOW CAUSE; DENYING  
PLAINTIFF'S MOTION FOR  
RECONSIDERATION; AND  
DISMISSING CASE****(Docket No. 20)**

Previously, this Court denied Plaintiff J&J Sports Production, Inc.'s motion for default judgment. The Court also ordered J&J to show cause as to why the instant case should not be dismissed with prejudice given its ruling on the default judgment motion. J&J has now filed a response to the order to show cause. In its response, J&J asks the Court to reconsider its ruling on the default judgment motion. In the alternative, J&J asks the Court to give it the opportunity to "conduct additional investigation, including third-party discovery, to support its allegations." Resp. at 6.

Based on J&J's response, the Court hereby **DISCHARGES** the order to show cause. However, the Court also **DENIES** the motion for reconsideration. J&J has not met the standard to justify a motion for reconsideration, as provided for in Civil Local Rule 7-9.

Furthermore, on the merits, J&J's position fails. For example, J&J contends that this Court is bound by the allegations in J&J's complaint but Federal Rule of Civil Procedure 55 expressly provides that a court may make an inquiry into "the truth of any allegation by evidence." Fed. R. Civ. P. 55(b)(2)(C).

1 J&J also argues that whether Defendant Franco Cruz Torres sought to enhance his profits is  
2 an issue that goes to damages and not liability. Typically, this is true. But in the circumstances  
3 presented here, whether Mr. Torres was taking action to enhance his profits is also probative of  
4 liability. In other words, if there were evidence that Mr. Torres was taking steps to profit from the  
5 display of the sports program, then that would make it more likely that the sports program was being  
6 displayed at his behest.

7 Finally, J&J asserts that simply because the program was being shown at the establishment,  
8 that is sufficient to establish liability. That position is not supported by any authority. The case  
9 cited by J&J is easily distinguishable from the facts in this case. In the instant case, the sports  
10 program was being displayed on a laptop, with no indication that the laptop belonged to or was  
11 otherwise affiliated with Mr Torres or the establishment. In *Joe Hand Promotions, Inc. v.*  
12 *Jorgenson*, No. 12-C-0159, 2013 U.S. Dist. LEXIS 1467 (E.D. Wis. Jan. 4, 2013), the program was  
13 shown on three wall-mounted televisions inside the establishment and was advertised on a “large  
14 sign outside the [establishment] announcing the event’s broadcast.” *Id.* at \*9.

15 The only question remaining is whether the alternative relief sought by J&J – *i.e.*, an  
16 opportunity to conduct additional investigation, including third-party discovery – should be granted.  
17 The Court denies the request for alternative relief. J&J has failed to provide any specifics as to the  
18 investigation or third-party discovery that it would like to conduct. It has simply asked in  
19 conclusory terms for permission to continue this case. The Court is not inclined to give J&J a  
20 further opportunity to provide specifics because (1) it should have conducted an investigation prior  
21 to bringing suit given the obvious deficiencies in the case<sup>1</sup> and (2) it had an opportunity to provide  
22 specifics on the additional investigation and/or third-party discovery in its response to the order to  
23 show cause but did not. J&J should not be given a third “bite at the apple.”

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28 <sup>1</sup> J&J’s failure to investigate further prior to bringing suit is questionable given its obligations under  
Federal Rule of Civil Procedure 11.

1 For the foregoing reasons, the Court discharges the order to show cause, denies J&J's motion  
2 for reconsideration, and dismisses this case with prejudice.

3 The Clerk of the Court is instructed to enter judgment in accordance with this opinion and  
4 close the file in this case.

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6 IT IS SO ORDERED.

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8 Dated: June 20, 2014

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EDWARD M. CHEN  
United States District Judge